

STATE OF MICHIGAN
COURT OF APPEALS

Publication Docket

1/31/2012

Panel : Judges Peter O`Connell, Christopher Murray, Pat Donofrio

1. Vote: _____ 298479-C IN RE FORFEITURE OF \$9,430

LC#:9-015761 CF Submitter: LSMITH2

Publication Request Filed by Party#: 1

Answer Due: 01/17/2012

Call Date: December/2011 Item#:29

Opinion Date: 12/15/2011

Disposition Due: 02/14/2012

PLEASE NOTE:

Unanimity Requirement. Publication may not be ordered except by unanimous vote.

Automatic Denial After Due Date. Failure to provide the clerk's office with the panel's decision on or before the Disposition Due date stated above will result in a clerk's notification to the parties that the request has been denied. MCR 7.215(D)(3).

Certification re Conflict Rule. The authoring judge is responsible for advising the presiding judge, in writing, that a subsequent published opinion on the same issue was not released between the time that this opinion was issued and the time that publication is ordered. Such an opinion would be binding precedent on the issue under MCR 7.215(J). Denial of this publication request would avoid any possible violation of that court rule.

Publication of PC with Dissent. By vote of the judges at the December 1987 Judges' Meeting, *initial* publication of a PC with a dissent is barred and such an opinion is to be *initially* released as an authored opinion with a dissent. However, this policy does not apply to an *unpublished* PC with a dissent that is subsequently published due to a publication request. In such a case, the PC may be published with a dissent (or partial dissent/concurrence). See Judges' Policy 2.6.4.



KYM L. WORTHY
PROSECUTING ATTORNEY

DONN E. FRESARD
CHIEF ASSISTANT

RICHARD HATHAWAY
CHIEF ASSISTANT

COUNTY OF WAYNE
OFFICE OF THE PROSECUTING
ATTORNEY
DETROIT, MICHIGAN

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1441 SAINT ANTOINE STREET
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January 3, 2012

Mr. Larry S. Royster
Chief Clerk
Michigan Court of Appeals
Cadillac Place
3020 W. Grand Blvd., Suite 14-300
Detroit, MI 48202

RE: Request for Publication under MCR 7.215(D).
People v \$9,430.00 UNITED STATES CURRENCY,
Defendant Property, and
Percy Head,
Claimant-Appellant.
Court of Appeals No. 298479
Lower Court No. 09-015761-CF

Dear Mr. Royster:

The People request publication of the unpublished per curiam opinion issued by the Court of Appeals in *People v \$9,430 UNITED STATES CURRENCY*, (Docket No. 298479), on December 15, 2011. In that opinion, the Court addressed a legal issue of continuing public interest regarding the proper use of profiling evidence in forfeiture cases. This is an issue of ongoing concern to litigants, attorneys, law enforcement officials and trial courts. Publication of this case would provide some much needed guidance regarding the use of this type of evidence.

This court has held that "drug profile" evidence is not particularly probative where there is no other convincing evidence indicating claimant was linked to drug trafficking. *In re Forfeiture of \$275*, 227 Mich App 462,468; NW2d 431 (1998), rev'd on other grounds 457 Mich 864 (1998). This opinion indicates that when "drug profile" evidence is coupled with sufficient factual evidence its probative value is greatly enhanced and helpful to the trial court in rendering a verdict.

In addition this opinion partially defines other evidence, that when coupled with "drug profile" evidence might legitimize its use; police officer observations, sense perceptions [smell of burned marijuana], positive canine indication, misstatement of amount of money possessed by claimant, self-employed claimant, the way the currency is wrapped, claimant operating a third

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party automobile, and claimant's prior drug history.

Respectfully Submitted,

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

JAMES GONZALES
Chief of Special Operations Division

BRIAN MOODY
Deputy Chief of Forfeiture Unit



RONALD ROBINSON (P-26681)
Assistant Prosecuting Attorney
Wayne County Prosecuting Attorney's Office
1441 Saint Antoine St., 12th Floor
Detroit, Michigan 48226
Phone: (313) 224-5831

cc Clerk of the Michigan Supreme Court
Marvin Barnett, Attorney for Appellant,

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CLERK OF SUPREME COURT
MARVIN BARNETT
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MICHIGAN COURT OF APPEALS

No. 298479-C
IN RE FORFEITURE OF \$9,430

1	PEOPLE OF MICHIGAN Oral Argument: Timely: Y	PL-AE	PRS	(26681) ROBINSON RONALD 1441 ST ANTOINE, 12TH FLOOR FRANK MURPHY HALL OF JUSTICE DETROIT MI 48226 313/ 224-5831
2	\$9,430	DF	RET	
3	HEAD PERCY Oral Argument: Y Timely: N	CL-AT	RET	(34033) BARNETT MARVIN 1001 WOODWARD SUITE 800 DETROIT MI 48226 313/ 962-8000

Case Age	6	9	12	15	18	24	30	36
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Status: Publication Request**Track:** Regular**List:** 27**Location:** SMITH

06/03/2010	1	Claim of Appeal – Civil Proof Of Service: 06/02/2010 Check No.: 323028 Fee: \$375.00 Jurisdictional Checklist: Y Register of Actions: Y Assistant Clerk: JPL Attorney: 34033 – BARNETT MARVIN Comments: fee paid in cash at Detroit Counter	JLOWE	06/23/2010
05/14/2010	2	Order Appealed From Electronic copy available From: WAYNE CIRCUIT COURT Case Number: 09-015761 – CF Trial Court Judge: (20714) SMITH VIRGIL C JR Nature Of Case: – Forfeiture	JLOWE	06/23/2010
06/11/2010	3	File Received by Detroit File Location: D	DGLETON	06/11/2010
06/14/2010	4	Steno Certificate – Tr Request Received Electronic copy available Date: 06/03/2010 Timely:Y Reporter: 1326 – BAKER SHERRY E Hearings: 05/12/2010	DGLETON	07/09/2010
06/16/2010	5	Transcript Requested by Atty or Party Electronic copy available Date: 06/03/2010 Timely:Y Reporter: 1326 – BAKER SHERRY E Hearings: 05/12/2010 trial	DGLETON	07/09/2010
07/09/2010	6	Invol Dismissal Warning – No Dkt Stmt Electronic copy available Attorney: 34033 – BARNETT MARVIN For Party: 3 HEAD PERCY CL-AT	KHAUSER	07/09/2010

Docket No. 298479

Due Date: 07/30/2010

07/23/2010	7	Docketing Statement MCR 7.204H Electronic copy available Filed by Attorney: 34033-BARNETT MARVIN For Party: 3 HEAD PERCY CL-AT	JRUSH	09/16/2010
07/28/2010	8	Defective Filing Letter Event: 7 For Party: 3 HEAD PERCY CL-AT Defect: Other-Cured Other: Need P/S that lists complete service addrs of PROS,	DGLETON	07/28/2010
08/10/2010	9	Proof of Service – Generic P/S Date: 08/10/2010 For Party: 3 HEAD PERCY CL-AT Attorney: 34033 – BARNETT MARVIN Comments: of docketing stmnt citing complete address of prs.	JRUSH	09/16/2010
08/10/2010	10	Defect Cured Event: 7 P/S Date: 08/10/2010 For Party: 3 HEAD PERCY CL-AT Defect: Other-Cured Other: Need P/S that lists complete service addrs of PROS,	JRUSH	09/17/2010
09/17/2010	11	Transcript Overdue – Notice to Reporter Mail Date: 09/17/2010 Reporter: 1326 – BAKER SHERRY E	BJACKSON	09/17/2010
10/22/2010	12	Invol Dismissal Warning – No Transcript Electronic copy available Attorney: 34033 – BARNETT MARVIN Due Date: 11/12/2010 OutStanding: 1326 – BAKER SHERRY E	BJACKSON	10/22/2010
10/27/2010	13	Notice of Filing Transcript Electronic copy available Date: 09/03/2010 Timely:Y Reporter: 1326 – BAKER SHERRY E Hearings: 05/12/2010	KNUNN	11/17/2010
11/22/2010	14	Stip: Extend Time – AT Brief Extend Until: 11/29/2010 Filed by Attorney: 34033 – BARNETT MARVIN For Party: 3 HEAD PERCY CL-AT P/S Date: Comments: 28 day ext allowed for 11/26/10 due date which is a court holiday.	KNUNN	11/30/2010
11/24/2010	15	Appearance – Appellee P/S Date: 11/24/2010 For Party: 1 PEOPLE OF MICHIGAN PL-AE Attorney: 26681 – ROBINSON RONALD	KNUNN	11/30/2010
12/03/2010	16	Invol Dismissal Warning – No Appellant Brief Electronic copy available Attorney: 34033 – BARNETT MARVIN For Party: 3 HEAD PERCY CL-AT Due Date: 12/24/2010	KHAUSER	12/03/2010

12/03/2010	17	Motion: Extend Time – Appellant Electronic copy available Proof Of Service: 12/03/2010 Notice Date: 12/14/2010 Filed by Attorney: 34033 – BARNETT MARVIN For Party: 3 HEAD PERCY CL-AT Answer Due: 12/10/2010 Comments: CL-AT rqsts a 45 day extn; Mot fee paid in cash – Rcpt #323055/\$100	DGLETON	12/06/2010
12/14/2010	18	Submitted On Administrative Motion Docket Event: 17 Motion:Extend Time – Appellant District: D Panel: CMM,,	DGLETON	12/14/2010
12/15/2010	19	Order: Extend Time – Appellant Brief – Grant Electronic copy available Event: 17 Motion:Extend Time – Appellant Panel: CMM,, Extension Date: 01/13/2011 Attorney: 34033 BARNETT MARVIN	DGLETON	12/15/2010
01/13/2011	20	LCt Pleading – Post–Judgment P/S Date: 01/12/2011 For Party: 3 HEAD PERCY CL-AT Attorney: 34033 – BARNETT MARVIN Comments: Motion for New Trial	DGLETON	02/03/2011
02/03/2011	21	Telephone Contact Comments: Per Mr. Love for Barnett–aty aware of 1/13/11 ext to fl AT brf; Need copy of 12/10 ord for office fl	DGLETON	02/03/2011
02/03/2011	22	Other P/S Date: 02/03/2011 For Party: 3 HEAD PERCY CL-AT Attorney: 34033 – BARNETT MARVIN Comments: Re–mailed 12/15/10 ord ext AT brf to cnsl at his correct addrs–1001 Woodward Ste 800 Det 48226	DGLETON	02/03/2011
02/04/2011	23	Fltrd off L19–Involuntary Dism Expiration Date: 02/04/2012	ADISESSA	02/04/2011
03/15/2011	24	Case Management Note P/S Date: 03/15/2011 Comments: Per Wayne Circ ROA, motion for new trial reset by trial court to 4/1/11.	ADISESSA	03/15/2011
04/12/2011	25	Case Management Note P/S Date: 04/12/2011 Comments: Per Wayne Circ ROA, hrg held on 4/1/11; motion for new trial denied (order to follow).	ADISESSA	04/12/2011
05/04/2011	26	Case Management Note P/S Date: 05/04/2011 Comments: Per Wayne Circ ROA, order denying motion for new trial signed and filed on 4/13/11	ADISESSA	05/04/2011
05/04/2011	27	Post–judgment Proceedings Overdue – Notice	ADISESSA	05/04/2011

Docket No. 298479

Electronic copy available
 Attorney: 34033 – BARNETT MARVIN
 Comments: Please forward 4/13/11 order denying motion and TR
 request to COA asap

05/27/2011	28	Post–Judgment Motion Concluded P/S Date: 04/13/2011 Comments: Per Wayne Circ ROA, motion for new trial denied on 4/13/11	ADISESSA	05/27/2011
05/27/2011	29	Telephone Contact For Party: 3 HEAD PERCY CL–AT Attorney: 34033 – BARNETT MARVIN Comments: Left msg for AT: COA needs copy of 4/13/11 Tr Ct order; and pls advise about P–J TRS.	ADISESSA	05/27/2011
05/27/2011	30	Telephone Contact For Party: 3 HEAD PERCY CL–AT Attorney: 34033 – BARNETT MARVIN Comments: Confirmed P–J proceedings concluded; advised AT that brief overdue letter would be sent on 5/31/11	ADISESSA	05/27/2011
05/31/2011	31	Invol Dismissal Warning – No Appellant Brief Electronic copy available Attorney: 34033 – BARNETT MARVIN Due Date: 06/21/2011	ADISESSA	05/31/2011
06/21/2011	32	LCt Order – Post Judgment Electronic copy available P/S Date: 04/13/2011 For Party: 3 HEAD PERCY CL–AT Attorney: 34033 – BARNETT MARVIN Comments: DENYING Motion for a New Trial	DGLETON	06/22/2011
06/23/2011	33	Telephone Contact For Party: 3 HEAD PERCY CL–AT Attorney: 34033 – BARNETT MARVIN Comments: Per Atty Love, AT brief will be filed by 6/23/11	ADISESSA	06/23/2011
06/23/2011	34	Brief: Appellant Electronic copy available Proof Of Service: 06/23/2011 Pages: 16 OA: Y Timely Filed: N Filed by Attorney: 34033 – BARNETT MARVIN For Party: 3 HEAD PERCY CL–AT	ADISESSA	06/27/2011
06/27/2011	35	Oral Arg Advise Ltr Sent Attorney: 34033 – BARNETT MARVIN	ADISESSA	06/27/2011
06/28/2011	36	Submitted On Involuntary Dismissal Docket Event: 31 Invol Dismissal Warning – No Appellant Brief District: D Panel: CMM,, Comments: Assess Costs Only	CNAGEY	06/28/2011
06/29/2011	37	Order: Costs – Assessed Electronic copy available Event: 31 Invol Dismissal Warning – No Appellant Brief Panel: CMM,, Amount: \$250.00	DGLETON	06/29/2011

Docket No. 298479

Attorney: 34033 BARNETT MARVIN

Comments: Atty filed AT after warn ltr due date; Costs due 7/20/11

07/11/2011	38	Proof of Service – Record on Appeal Electronic copy available P/S Date: 07/07/2011 For Party: 3 HEAD PERCY CL-AT Attorney: 34033 – BARNETT MARVIN Comments: Re: Jury Trial Transcript	DGLETON	07/12/2011
07/12/2011	39	Telephone Contact For Party: 3 HEAD PERCY CL-AT Attorney: 34033 – BARNETT MARVIN Comments: Mr. Love for aty Barnett confirmed that AT brf properly served 6/23/11 & Jury trs served 7/7/11	DGLETON	07/12/2011
07/12/2011	40	Stip: Extend Time – AE Brief Electronic copy available Extend Until: 08/25/2011 Filed by Attorney: 26681 – ROBINSON RONALD For Party: 1 PEOPLE OF MICHIGAN PL-AE P/S Date:	DGLETON	07/12/2011
07/12/2011	41	Correspondence Sent Electronic copy available P/S Date: 07/12/2011 For Party: 1 PEOPLE OF MICHIGAN PL-AE Attorney: 26681 – ROBINSON RONALD Comments: AE stip ltr sent – AE brf due 8/25/2011	DGLETON	07/12/2011
07/21/2011	42	Money Due Reminder Letter Electronic copy available Attorney: 34033 – BARNETT MARVIN	JLOWE	07/21/2011
08/03/2011	43	Brief: Appellee Electronic copy available Proof Of Service: 08/03/2011 Pages: 12 OA: Timely Filed: Y Filed by Attorney: 26681 – ROBINSON RONALD For Party: 1 PEOPLE OF MICHIGAN PL-AE Comments: Timely Per Stipulation; See Docket Event 40	CNAGEY	08/09/2011
08/03/2011	46	Costs Paid – Invol Electronic copy available P/S Date: 08/03/2011 For Party: 3 HEAD PERCY CL-AT Attorney: 34033 – BARNETT MARVIN Check#: 28239 Amount: \$250.00	DGLETON	08/11/2011
08/08/2011	44	Telephone Contact For Party: 3 HEAD PERCY CL-AT Attorney: 34033 – BARNETT MARVIN Comments: TT Mr Love at Atty Barnett's Office; Confirmed Receipt of AE Brf in Event 43	CNAGEY	08/08/2011
08/08/2011	45	Noticed Record: REQST Mail Date: 08/09/2011	AutoNotic	08/08/2011
08/31/2011	47	Record Request	POSTCARD	08/31/2011

Mail Date: 08/31/2011
Agency: WAYNE CIRCUIT COURT

09/14/2011	48	Record Filed Record Location: D Comments: file;tr	TBRUNER	09/15/2011
09/15/2011	49	Ready For Research	SetManagementList	09/15/2011
10/14/2011	50	Record Sent to Prehearing Detroit Record Location: P Comments: file;tr;at;ae	TBRUNER	10/14/2011
10/17/2011	51	Record Received by Research Comments: file 1; trs 1	ELYGIZOS	10/17/2011
10/25/2011	52	Assigned to research attorney Received by: AATHERTON Eval Days: 3	JPARTHUM	10/25/2011
10/31/2011	53	Research report proofed Received by: JP Difficulty Level: 1 Recommendation: Research report proofed	JPARTHUM	10/31/2011
11/07/2011	54	Record Sent to Clerk Detroit Record Location: E Comments: file 1; trs 1	ELYGIZOS	11/07/2011
11/07/2011	55	Research report complete Received by: AATHERTON Difficulty Level: 1 Recommendation: Research report complete	ELYGIZOS	11/07/2011
11/07/2011	56	Proposed Opinion Filed Received by: AATHERTON Recommendation: Proposed Opinion Filed	ELYGIZOS	11/07/2011
12/02/2011	58	Record Received by Clerk Detroit Record Location: D Comments: file;tr	TBRUNER	12/02/2011
12/07/2011	57	Submitted on Case Call District: D Panel: PDO,CMM,PMD Item Number: 29 Panel#: 2	MHICKNER	11/10/2011
12/07/2011	59	Oral Argument Audio	BatchUpdate	12/07/2011
12/09/2011	61	Record Sent to Clerk Lansing Record Location: E File Location: E Comments: file;tr	TBRUNER	12/12/2011
12/15/2011	64	Opinion – Per Curiam – Unpublished Electronic copy available Pages: 4 Panel: PDO,CMM,PMD Author: CMM Result: L/Ct Judgment/Order Affirmed	LSMITH2	12/14/2011

Docket No. 298479

01/04/2012	65	Publication Request Proof Of Service: 01/03/2012 Notice Date: 01/17/2012 Filed by Attorney: 26681 – ROBINSON RONALD For Party: 1 PEOPLE OF MICHIGAN PL-AE Answer Due: 01/17/2012 Pending On List: PREQ as of: 01/31/2012	LSMITH2	01/06/2012
01/31/2012	66	Submitted on Publication Docket Event: 65 Motion:Publication Request District: L Panel: PDO,CMM,PMD	LSMITH2	01/31/2012

Inquiry Printed On: 01/31/2012 9:22:00 AM
Confidential Listing Complete Thank You, LSMITH2
